



May 8, 2002

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla  
Dallas, Texas 75201

OR2002-2448

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162546.

The City of Dallas (the "city") received a request for:

1. Letter from the City to Jessie Wilson dated approximately 1996 or 1997 stating Jessie Wilson may continue to occupy the property at 9313 Leon, Dallas, TX, tax free unless space is rented out for a fee.
2. Letter from the City to Jessie Wilson dated approximately 1996 stating the City has approximately \$76,000 in an account to pay Jessie Wilson for a street easement through a portion of the property located at 9313 Leon, Dallas, TX. Note: in approximately 1996 Jessie Wilson received a partial payment of \$5,000, and left the remaining \$71,000 in the city account.
3. Any and all financial, real estate, or other records pertaining to the City's acquisition of the property located at 9313 Leon. Dallas, TX.

You state that you are making some of the information available to the requestor. However, you claim that portions of the requested information are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information marked as Exhibit B is excepted from disclosure under section 552.107. You do not assert any other exceptions for the information in Exhibit B. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that

section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). You state that the documents in Exhibit B “reveal communications from Linebarger, Heard, Goggan, Blair, Graham, Peña, & Sampson L.L.P. to their clients, which include the City of Dallas, the Dallas Independent School District, Dallas County, and subdivisions of Dallas County.” Although you do not explain who recorded the notes, the submitted information appears to consist of attorney notes. One of the entries, which we have marked, documents a conversation with an assistant city attorney. Based on your representations, and our review of the information submitted in response to this request, we agree that this entry may be withheld under section 552.107(1) on the basis of attorney-client privilege. However, you have not shown that any of the remaining entries document communications involving client confidences or legal advice and opinion. *See id.* at 7. Some of these entries apparently document communications, but the entry itself indicates the communication to have been with the opposing party or opposing counsel. In other instances, the entry does not indicate, nor do you inform us of the persons involved in the communication. *Cf. In re Monsanto Co.*, 998 S.W.2d 917, 933 (Tex. App.-Waco 1999, orig. proceeding) (attorney-client privilege did not apply to a report that did not identify the author or recipient). Finally, in the remaining instances, the entry does not appear to document a communication. Thus, although the city may withhold the marked entry in Exhibit B under section 552.107, the remaining information in Exhibit B must be released.

We now address your argument for the information in Exhibit C. You claim that the submitted documents are work product excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure “[a]n interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney’s mental processes, conclusions and legal theories. *See Open Records Decision No. 647 (1996)*. The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See id.* at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney’s mental processes, conclusions and legal theories. You contend that the information at issue “was prepared during preparation of *City of Dallas v. Jessie Edison Wilson*, Cause No. 89-12317-e.” You also argue that the information “tends to reveal

the mental processes, conclusions and theories of an attorney in the City Attorney's Office relating to litigation." Based on your assertions and our review of the submitted information, we agree that you may withhold the information in Exhibit C under section 552.111 in conjunction with the attorney work product privilege.

In summary, the city may withhold the information in Exhibit B which we have marked under section 552.107. The city may withhold the entirety of Exhibit C under section 552.111. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

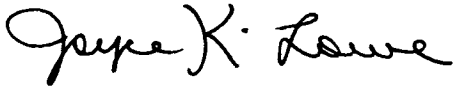
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 162546

Enc: Submitted documents

c: Mr. Jessie Wilson  
c/o Hueys  
74 Richardson Heights Village  
Richardson, Texas 75080  
(w/o enclosures)